

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

_____)	
ENGELHARD CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-11241-JLT
)	
UNITED STATES OF AMERICA, <u>et al.</u> ,)	<i>Electronic filing</i>
)	
Defendants.)	
_____)	

**UNITED STATES' UNOPPOSED MOTION FOR
ENLARGEMENT OF TIME TO RESPOND TO
COMPLAINT AND ESTABLISH BRIEFING SCHEDULE AND FORMAT**

Defendants United States of America, et al. ("United States"), by and through undersigned counsel, respectfully move this Court for an order that would enlarge the time in which to respond to the Complaint filed by Plaintiff Engelhard Corporation ("Engelhard"), as well as establish a briefing schedule and format with respect to the United States' response to the Complaint. Undersigned counsel for the United States has conferred with counsel for Engelhard regarding this motion, and Engelhard consents to the relief sought in this motion. In support of this motion, the United States offers the following:

1. This case involves claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-75, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-92k, and other laws. Engelhard seeks to recover from the United States all or some of the environmental cleanup costs that Engelhard has incurred or will incur at a former manufacturing facility in Plainville,

Massachusetts.

Enlargement of Time For United States To File Rule 12(b) Motion

2. The United States intends to respond to the Complaint by filing a motion for partial dismissal pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, as well as a partial answer. The United States respectfully requests an enlargement of time of 2 business days, to an including October 18, 2005, within which to file its motion and partial answer. The United States' response to the Complaint is currently due by October 14, 2005, and this is the United States' third request for an enlargement of time in which to file its response.

3. Good cause exists for this requested enlargement of time. Engelhard's claims for relief raise complex issues, and additional time is needed to draft, coordinate, and obtain approval of the United States' supporting memorandum within the Department of Justice and other federal agencies.

Enlargement of Page Limitations on Memoranda Supporting and Opposing Motion

4. Local Rule 7.1(b)(4) limits the length of memoranda supporting or opposing allowance of motions to twenty (20) double-spaced pages. The United States' motion under Rule 12(b) will address complex issues of law, some of which have not been briefed previously by the United States in this Court or the First Circuit. Accordingly, the United States estimates that it will take substantially more than twenty pages to adequately brief the issues. Thus, the United States respectfully requests an enlargement of fifteen (15) double-spaced pages, up to and including thirty-five (35) double-spaced pages, in which to complete its memorandum in support.

5. Engelhard deserves an equal number of pages to adequately brief the issues

addressed in the United States' opening brief. Therefore, the United States requests that Engelhard be granted an enlargement, up to an including thirty-five (35) double-spaced pages, in which to complete its memorandum in opposition to the United States' Rule 12(b) motion.

Proposed Briefing Schedule and Request For Leave To File Reply Memorandum

6. Local Rule 7.1(b)(2) allows a party opposing a motion fourteen (14) days in which to file an opposition. Given the issues involved in this case, and the expected length of Engelhard's opposition memorandum, Engelhard expects it will need 30 days after it receives the United States' motion in which to complete its opposition memorandum. Accordingly, the United States (on behalf of Engelhard) requests that Engelhard be given permission to file its opposition memorandum on November 17, 2005.

7. Given the issues involved, the United States respectfully seeks permission to file a 12-page reply memorandum in support of its motion. The United States requests that it be allowed fourteen (14) days to prepare and file this reply, i.e., up to and including December 1, 2005.

8. In summary, the parties agree to the following proposed briefing schedule and format:

<u>Party/Brief</u>	<u>Length of Memoranda</u>	<u>Filing Date</u>
United States' Motion for Partial Dismissal	35 pages	10/18/05
United States' Partial Answer	N/A	10/18/05
Engelhard's Opposition Memorandum	35 pages	11/17/05
United States' Reply Memorandum	12 pages	12/01/05

9. This motion is made in good faith and is not made to delay this action, or for any other improper purpose.

Wherefore, this Court should grant the relief requested in this motion. A proposed order is attached hereto.

Respectfully submitted,

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Dated: October 13, 2005

/s/ Stephen E. Crowley
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Local Rule 7.1(a)(2) Certification

Undersigned counsel certifies that pursuant to the requirements under Local Rule 7.1(a)(2), he has conferred with Plaintiff's counsel and that Plaintiff's counsel has assented to this motion.

/s/ Stephen E. Crowley
STEPHEN E. CROWLEY

CERTIFICATE OF SERVICE

I, Stephen E. Crowley, hereby certify that I have this 13th day of October 2005, served a true and correct copy of the foregoing UNITED STATES' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT, AND ESTABLISH BRIEFING SCHEDULE AND FORMAT on Plaintiff's counsel of record by electronic filing and first-class, postage pre-paid, U.S. mail, as follows:

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/s/ Stephen E. Crowley
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Plaintiff,

v.

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Electronic filing

[PROPOSED] ORDER

UPON consideration of the United States' Unopposed Motion For Enlargement of Time to Respond to Complaint and Establish Briefing Schedule and Format, it is hereby ORDERED that the motion be GRANTED, and it is FURTHER ORDERED that,

- (1) the United States shall have until October 18, 2005, to file its Rule 12(b) motion for partial dismissal, as well as its partial answer to the Complaint;
- (2) the United States' memorandum in support of its motion for partial dismissal shall not exceed thirty-five (35) double-spaced pages;
- (3) Engelhard shall have up to and including November 17, 2005, in which to file its memorandum opposing the United States' motion, and such memorandum shall not exceed thirty-five (35) double-spaced pages;
- (4) on or before December 1, 2005, the United States may file a reply memorandum in support of its motion, which shall not exceed twelve (12) double-spaced pages.

Dated: _____

The Honorable Joseph L. Tauro
United States District Judge